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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 GEORGE ELVIE GADDIS,

No. CIV S-04-0181-MCE-CMK-P

12 Plaintiff,

13 vs.

FINDINGS AND RECOMMENDATIONS

14 CALIFORNIA MEDICAL
15 FACILITY, et al.,

16 Defendants.
17 _____/

18 Plaintiff, a state prisoner proceeding pro se and in forma pauperis, brings this civil
19 rights action pursuant to 42 U.S.C. § 1983. On April 13, 2005, the court granted plaintiff's
20 application for leave to proceed in forma pauperis and directed plaintiff to submit completed
21 forms within 30 days for service of his complaint without pre-payment of costs by the U.S.
22 Marshal. Plaintiff failed to comply and, on September 22, 2005, the court directed plaintiff to
23 show cause in writing within 20 days why this action should not be dismissed for lack of
24 prosecution and failure to comply with court rules and orders. Plaintiff has not responded to the
25 order to show cause.

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1 The court must weigh five factors before imposing the harsh sanction of dismissal.
 2 See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v. U.S. Postal
 3 Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in
 4 expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of
 5 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits;
 6 and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran, 46 F.3d 52,
 7 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate
 8 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See Malone,
 9 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is appropriate where
 10 there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.
 11 1986). Dismissal has also been held to be an appropriate sanction for failure to follow local rules.
 12 See Ghazali, 46 F.3d at 53.

13 Having considered these factors, and in light of plaintiff's failure to comply with
 14 court orders or to respond to the court's order to show cause, the court finds that dismissal is
 15 appropriate.

16 Based on the foregoing, the undersigned recommends that this action be dismissed.

17 These findings and recommendations are submitted to the United States District
 18 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days
 19 after being served with these findings and recommendations, any party may file written objections
 20 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
 21 and Recommendations." Failure to file objections within the specified time may waive the right
 22 to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 DATED: October 20, 2005.

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 25 **CRAIG M. KELLISON**
 26 UNITED STATES MAGISTRATE JUDGE

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